HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI

Writ Petition No. 31414 of 1998

Between:

G. Ganesh

… Petitioner

And

Industrial Tribunal-cum-Labour Court,
Hyderabad & another

… Respondents

:: O R D E R ::

Counsel for the petitioner : Shri P.Sudheer Rao

Counsel for respondent No.2 : Shri K. Madhava Reddy

October 03, 2007

Whether the doctrine of proportionality can be invoked by the adjudicating bodies established under the Industrial Disputes Act, 1947 (for short, 'the Act') for nullifying the action taken by the employers to dispense with the services of employees found guilty of grave misconduct of misappropriation, embezzlement, fraud, cheating etc. is the question which arises for determination in this petition filed by Shri G. Ganesh for quashing award dated 13.10.1993 passed by Presiding Officer, Industrial Tribunal-cum-Labour Court, Hyderabad in I.D.No.239 of 1988.

The petitioner joined the service of the Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation') as Conductor in Rani Gunj Depot in the year 1980. In the course of check conducted on 8.11.1984, it was found that the petitioner had collected fare from six adults and chargeable children at their boarding point, but failed to issue tickets. It was also found that he did not complete the issue of

tickets within one fare stage and opened jumping stages instead of regular stages and failed to close the S.R. against stage No.9.

In the enquiry instituted by the competent authority, he was found guilty of the charge of misappropriation of the amount representing the price of the tickets. The disciplinary authority accepted the report of the enquiry officer and passed order dated 23.03.1985, whereby the petitioner was removed from service.

The petitioner challenged his removal by raising an industrial dispute under Section 2-A(2) of the Act, as amended by Andhra Pradesh Act No.32 of 1987. The learned Presiding Officer of the Labour Court held that the enquiry conducted against the petitioner was not fair and proper. Thereafter, opportunity was given to the parties to adduce evidence.

On a consideration of the evidence produced before him, the learned Presiding Officer concluded that the charge of having collected fare from the passengers without issuing tickets is proved against the workman (the petitioner herein). He then considered the issue of proportionality and held that an employee found guilty of fiscal misconduct does not deserve any leniency. Paragraphs 5 and 6 of the award, which contain the reasons recorded by the learned Presiding Officer, read as under:

"5. At the time of check, there were 12 passengers in total including the 10 ticketless passengers from whom the petitioner collected the fare at stage No.8 where they boarded, but failed to issue tickets to them. His Ex.M3 spot explanation was one of confession. He explained that he was new to the route and not aware of the stages. He pleaded for being excused assuring that he would be careful in future. Ex.M2 passengers' statement shows that they paid a total fare of Rs.6-40 at the boarding point but the petitioner failed to issue tickets to them. The said statement was attested by the petitioner as correct and recorded in his presence. Ex.M-6 check sheet with all check particulars including the stage of check shows that the total number of passengers at the time of check were 12 including the 10 ticketless passengers which was attested by the petitioner without any protest. As such, the contention that the check took place at stage 8/9, but not at stage 9 cannot be accepted. Top punched tickets were issued. The evidence of checking official, M.W.1 further shows that the ticketless

passengers were confronted to the petitioner at the time of check and in his presence the statement was recorded. Besides, the petitioner had given Ex.M3 spot explanation in his presence. Nothing concrete was suggested to disbelieve the evidence of M.W.1. I am convinced that the charges were proved beyond all reasonable doubt.

6. It was not true that the petitioner was new to the job as he served the Corporation for 5 years from 1980 onwards till he was removed on 23-3-1985. His plea that he was new to conduct a bus and that he did not know how to conduct a bus properly cannot be accepted. There were only 2 passengers with tickets out of the 12 passengers in the bus. When he found time to collect fare from the 10 ticketless passengers who were in a batch, his explanation that he had no time to issue tickets cannot be accepted. He had not also closed the S.R. numbers as against the stage 9 where the check took place. Besides, he has shown jumping stages instead of regular stages to avoid detection. Nothing prevented him to observe one fare stage rule to complete the issue of tickets. I do not find any mitigating circumstances to take a lenient view. In my view, the punishment of removal from service awarded alone is fit, proper and just."

I have heard Shri P. Sudheer Rao, learned counsel for the petitioner, Shri K. Madhava Reddy, learned counsel for respondent No.2 and scrutinized the award under challenge.

The power of judicial review vested in the High Court under Article 226 of the Constitution of India can be exercised in such matters only if it is shown that the adjudication made by the quasi-judicial authority suffers from any jurisdictional infirmity or is vitiated due to violation of the rules of natural justice or the findings recorded by the concerned authority are vitiated by an error of law apparent on the face of the record. This Court can scrutinise the matter to satisfy itself that the decision-making process is not tainted by arbitrariness, mala fides or violation of the rules of natural justice, but cannot sit in appeal over the actual decision except when it is shown to be perverse.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts

illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court of Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan**[1], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

"i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court."

The proposition laid down in **Sayed Yakoob[1] (supra)** has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[2].

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[3], their Lordships of the Supreme Court, while

dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[4], the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[5], the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> "i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the

smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.”

The parameters for exercise of the power of judicial review have been discussed in several judgments. In **State of Orissa v. Bidyabhushan Mohapatra**[6], the Supreme Court considered whether the High Court can interfere with the order of punishment

simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[7], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

> "The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the

procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[8], the Constitution Bench of the Supreme Court laid down the following proposition:

"High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[9], a three Judges Bench of the Supreme Court held as under:

"In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any

inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

(emphasis supplied)

In **B.C. Chaturvedi v. Union of India**[10], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence.

Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[11], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental

authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

The applicability of the doctrine of proportionality

In **Ranjit Thakur v. Union of India**[12], the Supreme Court applied the 'doctrine of proportionality' and interfered with the discretion exercised by the employer to punish delinquent employee. Some of the observations made in that judgment are extracted below:

"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of

bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

In **Union of India v. G. Ganayutham**[13], the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

"(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational – in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no

fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgent of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

In **State Bank of India v. Samrendra Kishore Endow**[14], **State of Uttar Pradesh v. Ashok Kumar Singh**[15], **State of Uttar Pradesh v. Nandkishore Shukla**[16], **State of Punjab v. Baxi Singh**[17], **Uttar Pradesh State Road Transport Corporation v. A.K. Parul**[18], **Union of India v. J.R. Gheman**[19], the Supreme Court disapproved invoking of the doctrine of proportionality by the High Courts.

I n **Om Kumar v. Union of India**[20], the Supreme Court considered the applicability of the 'doctrine of proportionality' in the context of Article 14 of the Constitution, referred to the judgments in **Ranjit Thakur v. Union of India** (supra)**, B.C. Chaturvedi v. Union of India**[21] and held:

"1) In this context, we shall only refer to these cases. In **Ranjit Thakur v. Union of India** this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In **B.C. Chaturvedi v. Union of India** this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter

back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in **Ganayutham**."

2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

In **Regional Manager, U.P. SRTC v. Hoti Lal**[22], the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

"The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional." (underlining is mine)

In **Director General, RPF v. Ch. Sai Babu**[23], the Supreme Court reiterated that the High Court should ordinarily not interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

> "Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

The views expressed in the above noted cases have been reiterated in the recent judgments – **Hombe Gowda Educational Trust v. State of Karnataka**[24], **Commissioner of Police v. Syed Hussain**[25], and **State of U.P. v. Sheo Shanker Lal Srivastava**[26].

In the light of the principles laid down in the above-noted judgments on the scope of judicial review, I shall now consider whether the finding recorded by the learned Presiding Officer on the charge levelled against the petitioner is vitiated by an error of law apparent on the face of the record. A critical scrutiny of the evidence produced before the Labour Court shows that while the employer i.e. the Corporation had produced substantive evidence to prove that the petitioner had collected fare from the passengers and did not issue the tickets, the latter did not produce any evidence to controvert the same. Therefore, the finding of guilt recorded by the learned Presiding Officer cannot be termed as perverse on the premise that it is based on no evidence.

The decision of the learned Presiding Officer not to apply the doctrine of proportionality also does not suffer from any infirmity.

Rather, the same is in consonance with the legal proposition laid down by the Supreme Court that a person found guilty of misappropriation of public funds, cheating or fraud does not deserve to be shown any leniency and the discretion exercised by the employer cannot be tampered with by the courts.

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

October 03, 2007

ksld/ARS

---

[1] AIR 1964 SC 477
[2] JT 2002 (8) SC 69 = (2002) 9 SCC 375
[3] AIR 1970 SC 61
[4] JT 1999 (6) SC 507 = (1999) 8 SCC 90
[5] AIR 2003 SC 3044
[6] AIR 1963 SC 779
[7] AIR 1963 SC 1723
[8] AIR 1965 SC 1103
[9] AIR 1975 SC 2151
[10] (1995) 6 SCC 749
[11] (1999) 1 SCC 759
[12] (1987) 4 SCC 611
[13] (1997) 7 SCC 463
[14] (1994) 2 SCC 537
[15] (1996) 1 SCC 302
[16] (1996) 3 SCC 750
[17] (1997) 6 SCC 381
[18] (1998) 9 SCC 416
[19] (1999) 6 SCC 403

[20] (2001) 2 SCC 386
[21] (1995) 6 SCC 749
[22] (2003) 3 SCC 605
[23] (2003) 4 SCC 331
[24] (2006) 1 SCC 430
[25] (2006) 3 SCC 173
[26] (2006) 3 SCC 276